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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1694

MOBIL OIL CORPORATION,
Petitioner,
v.
HARRY LIGHTCAP, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of Kansas

MOTION OF THE NORTHERN DISTRIBUTOR GROUP FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

Interstate Power Company
Iowa Electric Light and Power Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Corporation
Metropolitan Utilities District of Omaha
Minnesota Gas Company
The Nebraska Natural Gas Company
North Central Public Service Co.
Northern States Power Company
Northwestern Public Service Company

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June 10, 1977

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The above-named eleven utility companies respectfully move for leave to file a brief as *amici curiae* in support of the petition filed in this case on behalf of the Petitioner, Mobil Oil Corporation (Mobil). For ease of identification, the companies jointly move under the name of the "Northern Distributor Group."

The consent of the attorneys for Mobil has been obtained. The consent of the attorneys for the Respondents has been requested but refused.

The interest of the Northern Distributor Group arises because the monetary impact of the decisions of the state courts below ultimately will fall, in whole or in part, upon natural gas distribution companies dependent upon interstate supplies and their gas consumers. This case involves royalty payments for natural gas produced in the Kansas Hugoton Field and sold by Mobil to Northern Natural Gas Company (Northern) at rates regulated by the Federal Power Commission under the Natural Gas Act. Northern is an interstate pipeline transmission company which resells such natural gas to its direct customers and to privately-owned and municipally-owned distribution systems in the States of Kansas, Nebraska, Iowa, Minnesota, South Dakota and Wisconsin.

The Northern Distributor Group companies provide natural gas service to domestic, commercial and industrial consumers in the Upper Midwest area of the United States. Collectively, they purchase most of the natural gas sold in interstate commerce by Northern and serve over one million gas consumers in Nebraska, Iowa, Minnesota, South Dakota and Wisconsin. Thus, royalty payments by Mobil ultimately become a component of the rates paid by the Northern Distributor Group companies and charged by them to ultimate consumers of natural gas in these states.

Under the decisions below, Mobil would be required to make payments to royalty owners on the basis of al-

leged "market values" of natural gas which exceed by 35 to 50 percent the rates prescribed by the Federal Power Commission for Mobil's sales to Northern. If the precedent of these decisions is applied to current sales, the "value" for royalty payments can be as much as 400 to 500 percent higher than the applicable Commission-prescribed rates. If Mobil and other regulated producers are required to make such payments of windfalls to royalty owners, the Northern Distributor Group is gravely concerned about three results which will pass through the impact of such payments to distribution companies and the consumers served by them: (1) individual producers, such as Mobil, will become eligible for "special relief" from Commission-prescribed rates to recover the higher royalty payments through higher rates charged to interstate pipelines, including Northern; (2) the increased royalty payments also will become embedded components in the costs of producers used by the Commission to prescribe and increase national rate ceilings for all producers; and (3) in turn, pipelines, such as Northern, will recover these costs from their customers, such as the Northern Distributor Group companies, through the operation of tariff provisions allowing recovery of all costs of purchased gas. Therefore, the Northern Distributor Group has a direct, immediate interest in this case which differs from the interests asserted and represented by the regulated natural gas producers and the royalty owners and which is not represented before this Court.

The courts below concluded that because the royalty owners are not "natural-gas companies," as defined by the Natural Gas Act, there is *no* bar to state court judgments awarding windfall royalty payments on the basis of "market values" far exceeding the Commission-prescribed ceilings that limit the rates charged by a regulated producer. These holdings disregard pre-emption of the relevant "market" through rate regulation under

the Natural Gas Act, and the operation of the Supremacy and Commerce Clauses of the United States Constitution upon all of the private "contractual" arrangements between a regulated producer and a lessor and between the regulated producer and the pipeline purchaser. These holdings also are inconsistent with decisions of this Court striking down both direct and indirect intrusions by state courts and agencies into the sphere of federal regulation created by Congress under the Natural Gas Act to provide a comprehensive, effective system of protection of ultimate consumers against the very type of unreasonable, unjustified windfall charge which is involved in this case. These holdings thus present questions which should be reviewed and resolved by this Court promptly to prevent further erosion of the effectiveness of the regulatory system under the Natural Gas Act and further state court decisions adverse to interstate consumers of natural gas.

For these reasons, the Northern Distributor Group respectfully moves for leave to file a brief *amici curiae* in support of the petition to present more fully to the Court the nature of their interests, their grave concern, and reasons the Court should grant the petition.

Respectfully submitted,

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June 10, 1977